

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
STANLEY METCALF SHAKE MILL,

Appellant,

v.

OLYMPIC AIR POLLUTION CONTROL
AUTHORITY,

Respondent.

PCHB No. 87-95

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a civil penalty of \$250 for the alleged violation of Olympic Air Pollution Control Authority Regulation I, Section 3.05 came on for hearing in Lacey on October 23, 1987, before the Pollution Control Hearings Board, Lawrence J. Faulk (Presiding), Wick Dufford and Judith A. Bendor.

Appellant Stanley Metcalf Shake Mill was represented by its owner, Mr. Stanley Metcalf. Respondent Olympic Air Pollution Control Authority (OAPCA) was represented by its attorney Fred D. Gentry.

Witnesses were sworn and testified. Exhibits were examined. From the testimony heard and exhibits examined, the Board makes these

FINDINGS OF FACT

I

Appellant Stanley Metcalf Shake Mill is a company located in Amanda Park, Washington, a small community located in a remote, sparsely populated part of the Olympic Peninsula. On the company's site are two buildings, the shake mill itself and a shop. The shop is a windowless structure, approximately 50' by 60', located a short distance from the mill.

II

Respondent OAPCA is a municipal corporation with the responsibility for conducting a program of air pollution prevention and control in a multi-county area which includes the site of appellant's plant.

OAPCA, pursuant to RCW 43.21B.260, has filed with this Board a certified copy of its Regulation I (and all amendments thereto) which is noticed.

III

On the afternoon of March 12, 1987, at approximately 4:20 p.m. respondent's inspector was driving through Amanda Park in an agency vehicle, marked with the OAPCA insignia. He had just picked up some ambient air monitoring samples. He was dressed in ordinary street clothes. As he drove by, he noticed smoke coming from appellant's

1 mill. He turned in to appellant's property and parked about 30 feet
2 from the shop. No one was observed outside on the site. Dim light
3 issued from the partially-opened shop door. He walked over to the
4 shop and walked in the door. The appellant and his wife were at the
5 far end of the building away from the door. The appellant was cutting
6 steel with a torch and wore dark goggles to shield his eyes from the
7 flame. Mrs. Metcalf was painting plywood. The lighting was poor.

8 The inspector displayed no badge, showed no identification, wore
9 no uniform. The Metcalfs had not previously met him. The agency
10 truck outside was not visible to them. They were startled by the
11 inspector's sudden appearance. They did not know who he was.

12 The inspector did not introduce or identify himself. He asked Mr.
13 Metcalf if the burner was his and received an evasive reply. He told
14 Metcalf the mill's burner was smoking, ordered him to turn on the
15 blowers and said he would get the sheriff, if necessary, to obtain
16 compliance.

17 Metcalf, a large man, shut off his torch, took off his goggles and
18 moved forward. He told the inspector to get the hell out of there.
19 The inspector ran to his truck and took off. The entire episode
20 happened quickly, probably taking no more than a minute.

1 IV

2 On April 23, 1987, after arrangements were made by phone a
3 follow-up inspection was conducted by the inspector. The appellant
4 was cooperative with the inspector during this follow-up inspection.

5 V

6 On May 11, 1987, Notice of Violation (No. 000182) was issued to
7 Stanley Metcalf alleging a violation of Section 3.05 of OAPCA
8 Regulation I on March 12, 1987. Section 3.05 states:

9 No person shall willfully interfere with or
10 obstruct the Control Officer or any Authority
11 employee in performing any lawful duty.

12 VI

13 On May 14, 1987, a Notice and Order of Civil Penalty was sent to
14 appellant assessing a penalty of \$250 for allegedly violating OAPCA
15 Regulation I, Section 3.05. From this, Mr. Metcalf appealed on June
16 9, 1987.

17 VII

18 The remoteness of the locale influenced what happened between the
19 inspector and Mr. Metcalf. It contributed to insecurity and lack of
20 cooperation by both parties.

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26 FINAL FINDINGS OF FACT,
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VIII

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters. Chapters 43.21B and 70.94 RCW.

II

As noted, OAPCA Regulation I, Section 3.05 prohibits willful obstruction of an agency inspector's performance of duty.

Section 3.01(e) sets forth a related provision:

For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, the Control Officer or his duly authorized representative shall have the power to enter upon any private or public property, with the permission of the owner or his duly authorized representative.

III

Reading Section 3.05 and Section 3.01(e) together, we conclude that the duty of cooperation does not arise until the inspector's identity is clearly known, and the owner has the opportunity to consent to the inspector's presence. Such identity could be aided by

1 badges, uniforms, or a clear statement by the inspector at the very
2 outset of his authority status.

3 Here it is clear that both the inspector and the appellant reacted
4 hastily in the heat and dimness of the moment. Neither would contend
5 it was their finest moment. However, under all the facts and
6 circumstances, we hold that no violation of Section 3.05 was shown.

7 Cooperation is, of course, the key to an effective program of air
8 pollution prevention and control. All parties here have shown
9 themselves capable of cooperation when identity is clear and heads are
10 cooler. Now that Mr. Metcalf knows this OAPCA inspector, he no longer
11 can claim ignorance of his identity.

12 IV

13 Any Finding of Fact which is deemed a Conclusion of Law is hereby
14 adopted as such.

15 From these Conclusions of Law the Board enters this
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ORDER

The Notice an Order of Civil Penalty in the amount of \$250 issued by OAPCA to Stanley Metcalf Shake Mill is VACATED.

DONE this 18th day of February, 1988.

POLLUTION CONTROL HEARINGS BOARD

 2/18/88
LAWRENCE J. FAULK, Presiding


WICK DUFFORD, Chairman


JUDITH A. BENDOR, Member

FINAL FINDINGS OF FACT,
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